

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MOBIUS MANAGEMENT SYSTEMS, INC.,	:	
	:	
Plaintiff,	:	
	:	C.A. No. 05-346 SLR
- against -	:	
	:	<u>Declaration of Jonathan M. Wagner</u>
ACARTUS, INC.,	:	
	:	
Defendant.	:	
	:	

I, Jonathan M. Wagner, hereby declare:

1. I am a member of the firm of Kramer Levin Naftalis & Frankel LLP, co-counsel with The Bayard Firm to plaintiff Mobius Management Systems, Inc. I submit this declaration in support of Mobius' application for a preliminary injunction requiring defendant Acartus, Inc. ("Acartus") to cease using plaintiff's "Mobius" trademark and engaging in false advertising.

2. On May 31, 2005, Mobius commenced an action against Acartus, asserting claims for trademark infringement and false advertising, as well as for false representation/designation of origin, deceptive trade practices and unfair competition.

3. Soon thereafter, counsel for Acartus contacted me. He represented that Acartus would like to resolve this matter promptly by making changes to the challenged Acartus advertising.

4. I informed Acartus' counsel that Mobius planned to move for a preliminary injunction unless the matter was resolved and unless Acartus took down the false

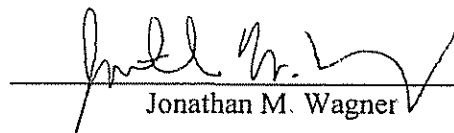
and challenged promotional sheet from its website. Acartus' counsel represented that he would instruct Arcartus to take the promotional piece down now while the parties discussed settlement. Acartus' counsel also represented that Acartus would provide a revised data sheet for Mobius' consideration.

5. On June 6, 2005, Acartus submitted a revised data sheet for Mobius' consideration. Upon receipt of this proposal, Mobius put Acartus on notice that it should "refrain from re-posting" the data sheet until Mobius could evaluate the proposal. (Exh. A, attached). I informed Acartus' counsel in a subsequent e-mail that Acartus' proposed revised promotional material still infringed Mobius' rights. (Exh. B, attached).

6. As set forth more fully in the Declaration of Mitchell Gross, President of Mobius, Acartus posted another promotional piece on the internet that Mobius believes infringes Mobius' trademark rights and make false statements.

7. As further set forth in Mr. Gross's declaration, Mobius requests expedited discovery in order to ascertain whether Acartus had inappropriate access to Mobius' software and improperly copied portions of Mobius' unique software code into its export utility by improper means. A copy of Mobius' document request, which is narrowly tailored to this issue, is attached as Exhibit C.

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct. Executed this 15th day of July, 2005.


Jonathan M. Wagner

CERTIFICATE OF SERVICE


Kurt M. Heyman, Esquire, hereby certifies that on July 5, 2005, copies of the foregoing Declaration of Jonathan M. Wagner were served upon the following:

VIA HAND DELIVERY

Acartus, Inc.
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

VIA FEDERAL EXPRESS

Anton J. Hopen, Esquire
Smith & Hopen, PA
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Kurt M. Heyman (# 3054)